Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-6316

ANDREW C. GOOSBY, ET AL.,

Petitioners,

—v.—

MAURICE OSSER, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DATE	PROCEEDINGS
1971	
October 4	Petition to proceed in forma pauperis, filed.
October 6	Order that Petition to proceed in forma pauperis is GRANTED, etc. filed.
October 6	Complaint filed.
October 6	Summons exit.
October 6	Plfs' Motion for Temporary Restraining Order, affidavit in support thereof and notice thereon filed.
October 6	Plfs' Motion for Preliminary Injunction, affidavit in support thereof filed.
October 6	Stipulation that service of summons and complaint as to defts. J. Shane Creamer and C. Dolores Tucker and Commonwealth of Penna. is waived and that service is accepted by their counsel, filed.
October 6	Stipulation that Service of Summons and complaint as to defts. Maurice S. Osser, Frank Patterson, Louis Menna, Edward G. Mekel, Jack Welsh, Registration Commission for the City of Phila., and Edward J. Henddricks is waived, and that service is accepted by their counsel, filed.
October 6	HEARING: re Temporary restraining order—Complaint dismissed.
October 6	Order that complaint is dismissed, in open Court, filed. (10-8-71 entered and copies mailed)

DATE	PROCEEDINGS
1971	
October 7	Order that plff's complaint in the above captioned matter is dismissed with prejudice, filed. (10-12-71 entered and copies mailed)
October 7	Plff's memorandum of law in support of convening a three Judge Court, filed.
October 7	Plff's brief in support of motion for temporary restraining order, filed.
October 7	Plff's motion for three judge Court, filed.
October 7	Partial transcript of 10-6-71, filed.
October 7	Notice of appeal of plff., filed.
October 7	Copy of Clerk's Notice to U.S. Court of Appeals. (Copy to Judge Troutman)
October 14	Record transmitted to U.S. Court of Appeals.
October 13	Certified copy of Order, U.S. Court of Appeals, dated 10-8-71, granting an expedited hearing in the above entitled case, listing the appeal for argument during the week or 10-18-71, and denying the motion for injunction pending appeal, filed.
November 19	Transcript of 10-6-71, filed.
November 19	Certified copy of Order, U.S. Court of Appeals, that request of Appellee, Common- of Penna., for leave to file petition for rehearing en banc out of time is DENIED, filed.
December 28	Certified copy of judgment in lieu of formal mandate received from U.S.C.A. affirming judgment of this Court entered 10/7/71, filed.
December 28	Record on Appeal Returned.

DOCKET ENTRIES OF THE COURT OF APPEALS

DATE	FILINGS—PROCEEDINGS
1971	
October 7	(Certified copy of Order dated October 6, 1971 by Judge Troutman, U.S.D.J. granting plaintiffs-appellants leave to proceed in forma pauperis)
	Certified copy of Noticeof Appeal rec'd from counsel for appellants, filed.
	Motion by appellants for expedited hearing, filed. (4 copies)
	Motion by appellants for convening a three judge District Court and for Injunction Pending appeal, filed. (4 copies)
	Appearance of Jonathan A. Stein; Esquire; Ann Torregrossa, Esquire and Joseph A. Torregrossa, Esquire for appellant, filed.
October 8	Appellants' brief in support of motion for injunction pending appeal, rec'd. (4 copies)
	Heard on appellants motion for expedited hearing and appellants motion for injunction pending appeal. Coram: Kalodner, Staley and Adams, Circuit Judges.
	Order (*Kalodner*, Staley and Adams, Circuit Judges) granting motion for expedited hearing and listing the appeal for argument the week of October 18, 1971 and denying motion for injunction pending appeal, filed.
	Certified copy of above order to Clerk of District Court.

DATE	FILINGS—PROCEEDINGS
1971	
October 12	Order (Clerk) directing that appellants legible typewritten brief be hand filed and hand served not later than Tuesday, October 12, 1971; that appellees legible typewritten brief be hand filed and hand served not later than Friday, October 15, 1971; and that appellants' legible typewritten reply brief, if any, be filed and hand served not later than Monday, October 18, 1971, filed.
	Brief for appellants, filed. Certificate of Service attached. (7 copies)
October 13	Copy of Notice of Appeal rec'd from the Clerk of the District Court, filed.
October 14	Appearance of Barry A. Roth, Esquire for appellee, filed.
October 15	Record, received and filed.
October 15	Brief for appellees, received and filed. (4 copies). Proof of service by hand delivery on October 15, 1971 appears on page 29 of brief.
October 15	Brief for the Commonwealth, received and filed. (6 copies). Certificate of service by mail on October 15, 1971 appears on last page of brief.
October 18	Reply brief for appellants, received and filed. (7 copies). Certificate of service by mail on October 18, 1971 appears on page 6 of brief.
October 19	Supplemental brief for appellees, received for the information of the Court. (copies). Proof of service in letter dated October 18, 1971.
October 19	Letter, dated October 18, 1971, from Harry Wolov, Esquire counsel for appellees requesting permission to submit supplemental brief, received and filed.

DATE	FILINGS—PROCEEDINGS
1971	
October 19	Letter, dated October 19, 1971, from Joseph A. Torregrossa, Esquire counsel for appellant objecting to the filing of appellees' supplemental brief, filed.
October 26	Opinion Per Curiam. (*Aldisert*, Gibbons and Rosenn, Circuit Judges) filed.
October 26	Judgment affirming the order of the District Court, filed October 7, 1971 which dismissed the complaint. Costs taxed against appellants, filed.
October 21	Submitted on briefs. Coram: Aldisert, Gibbons and Rosenn, Circuit Judges.
November 9	Petition by appellants for rehearing in banc, received and filed. (16 copies). Certificate of service attached.
November 11	Order (*Aldisert*, Gibbons and Rosenn, Circuit Judges) amending the slip opinion filed October 26, 1971 as follows: (1) the last five lines of the second paragraph on page 4 are deleted and the following substituted therefor: "as amended by the Act of August 14, 1963, P.L. 900, 25 PURD. STAT. ANNO. § 623-1 et seq., and Pennsylvania Election Code, Act of 1937, P.L. 1333, Art. I, Sec. 102, as amended by the Act of August 13, 1963, P.L. 707, 25 PURD. STAT. ANNO. § 2602(w)(12), offend the equal protection clause and are therefore unconstitutional. The former statute regulates voting registration; the latter defines 'qualified absentee elector'. (2) The first line on page 5 is deleted and the following substituted therefor: "immediate adjudication, we have limited our opinion"., filed.

DATE	FILINGS—PROCEEDINGS
1971	
November 19	Order (Aldisert and *Rosenn*, Circuit Judges) denying oral request of counsel for appellee, Commonwealth of Pennsylvania, leave to file petition for rehearing en banc out of time, filed.
November 19	Certified copy of above order to Clerk of District Court.
December 17	Per Curiam Opinion on Petition for rehearing and order (Seitz, Chief Judge and Van Dusen, *Aldisert*, Adams, Gibbons, Rosenn, Rosen and Hunter, Circuit Judges with separate dissent by Judge *Adams*) denying the petition for rehearing, filed. Judges Van Dusen, Adams and Rosenn would grant the petition for rehearing.
December 27	Certified copies of the order amending the opinion and order on petition for rehearing to Clerk of District Court.
December 27	Certified judgment in lieu of formal mandate issued.
December 27	Record returned to Clerk of District Court.
December 29	Receipt for record received from Clerk of District Court, filed.
1972	
March 15	Notice of filing on March 10, 1972 of petition for writ of certiorari, received from Clerk of Supreme Court, filed. (S.C. No. 71-6316)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action-
Class Action

No. 71-

[Filed Oct. 4, 1971, John J. Harding, Clerk, U. S. District Court]

ANDREW C. GOOSBY, ET AL.

vs.

MAURICE OSSER, ET AL.

PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Title 28, U.S.C. § 1915, plaintiffs petition this Court for leave to commence and prosecute this action in forma pauperis without prepayment of fees and costs or security therefor because, as their attached affidavit indicates, they are unable to pay such costs or give security therefor.

/s/ Ann S. Torregrossa
ANN S. TORREGROSSA, ESQUIRE

/s/ Joseph A. Torregrossa
JOSEPH A. TORREGROSSA, ESQUIRE

/s/ Jonathanin Stein
JONATHANIN STEIN, ESQUIRE

/s/ Harvey N. Schmidt
HARVEY N. SCHMIDT, ESQUIRE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action-
Class Action

No. 71-2380

ANDREW C. GOOSBY, ET AL.

vs.

MAURICE OSSER, ET AL.

ORDER

AND NOW, this 6th day of October 1971, upon petition and affidavit of plaintiffs for leave to proceed in forma pauperis, it is ORDERED that the petition be and hereby is GRANTED and that plaintiffs may commence and prosecute the above-titled action without prepayment of fees and costs or security therefor.

/s/ E. Mac Troutman
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action-
Class Action

No. 71-2380

ANDREW C. GOOSBY,
Holmesburg Prison
Philadelphia, Pa. and

THEODORE Y. GUMBY,
Holmesburg Prison
Philadelphia, Pa. and

ERIC V. JOHNSON,
Holmesburg Prison
Philadelphia, Pa. and

ARCHIE T. JONES,
Holmesburg Prison
Philadelphia, Pa. and

CARL S. LANE,
Holmesburg Prison
Philadelphia, Pa. and

MICHAEL MITCHELL,
Holmesburg Prison
Philadelphia, Pa. and

CURTIS WILLIAMS,
Holmesburg Prison
Philadelphia, Pa. and

DAVID CASPER,
Holmesburg Prison
Philadelphia, Pa. and

ROBERT SIMMONS,
Holmesburg Prison
Philadelphia, Pa. and

BOBBY STOCKTON,
Holmesburg Prison
Philadelphia, Pa. and

NATHANIEL NELSON,
Holmesburg Prison
Philadelphia, Pa. and

HUGH WILLIAMS,
Holmesburg Prison
Philadelphia, Pa.,
PLAINTIFFS

on behalf of themselves and
all others similarly situated

vs.

MAURICE S. OSSER, City Commissioner
City Hall Annex
Philadelphia, Pa. and

FRANK PATTERSON, City Commissioner
City Hall Annex
Philadelphia, Pa. and

LOUIS MENNA, City Commissioner
City Hall Annex
Philadelphia, Pa. and

EDWARD G. MEKEL, Deputy Commissioner
City Hall Annex
Philadelphia, Pa. and

JACK WELSH, Voting Registration Supervisor
City Hall Annex
Philadelphia, Pa.

REGISTRATION COMMISSION FOR THE CITY OF PHILADELPHIA
City Hall Annex
Philadelphia, Pa. and

COMMONWEALTH OF PENNSYLVANIA

and

J. SHANE CREAMER, Attorney General
Commonwealth of Pennsylvania
Harrisburg, Pa. and

C. DELORES TUCKER, Secretary of the Commonwealth
Commonwealth of Pennsylvania
Harrisburg, Pa. and

EDWARD J. HENDRICKS
Superintendent of Prisons for Philadelphia County

COMPLAINT—CLASS ACTION

1. This is a proceeding for a declaratory judgment, temporary restraining order, preliminary and permanent injunction on the ground that the Pennsylvania Election Laws, First Class City Permanent Registration Act of March 30, 1937, P.L. 115 as amended, 25 Purdon's Statutes §§ 623-1 et seq. and Pennsylvania Election Code, Act of 1937, P.L. 1333, Art. I, Sec. 102, as amended by Act of August 13, 1963, P.L. 707, § 1, 25 Purdon's Statutes § 2602 (w) (12), is unconstitutional on its face and is being applied unconstitutionally by defendants, thus depriving plaintiffs and members of the class they represent who are unconvicted detainees in Philadelphia County prisons of the right to register and to vote in Philadelphia County.

2. The plaintiffs have been denied their right to equal protection and due process of law as guaranteed by the Fourteenth Amendment of the United States Constitution, their right to political expression and redress of grievances as guaranteed by the First and Fourteenth Amendments of the United States Constitution, their right to be free from cruel and unusual punishment as guaranteed by the Eighth and Fourteenth Amendments of the United States Constitution, and their right to vote in violation of Article I, Section 2 of the United States Constitution.

3. The plaintiffs allege that the defendants, acting individually and or in concert under color of law, have

been applying to members of the class different standards, practices and procedures to determine qualified voters in violation of 42 U.S.C. § 1971(a)(2)(A) ("Voting Rights Act of 1965").

4. This is a suit in equity authorized by 42 U.S.C. § 1983, to redress deprivation under color of law of rights, privileges and immunities secured by the United States Constitution. Monetary damages are inadequate and the plaintiffs and members of the class they represent have suffered and continue to suffer irreparable injury as a result of the application of the statutory provisions challenged herein. Accordingly, injunctive relief is necessary.

JURISDICTION

5. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 in that the matter in controversy exceeds $10,000 and arises under the Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 (3) and (4), § 2201 and § 2202.

PARTIES

6. Plaintiff Andrew C. Goosby is thirty-four years of age, a United States citizen and has lived at 2663 Wolf Street, Philadelphia, Pennsylvania for the eight years preceding his arrest. He intends to return to this residence upon his release and would have returned to that address if he could afford bail. He has been awaiting trial since May 29, 1971 and his bail is set at $10,000. He is presently incarcerated at Holmesburg County Prison. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

7. Plaintiff Theodore Y. Gumby is eighteen years of age, a United States citizen and has lived at 901 North 48th Street, Philadelphia, Pennsylvania for the sixteen months preceding his arrest. He intends to return to this residence upon his release and would have returned to this address if he could afford bail. He is presently

incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on July 15, 1971 and his bail is set at $1,000. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

8. Plaintiff Eric V. Johnson is twenty-one years of age, a United States citizen and has lived at 1333 Bainbridge Street, Philadelphia, Pennsylvania for fourteen years preceding his arrest. He intends to return to this residence upon his release and would have returned to this address if he could afford bail. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on May 12, 1971 and bail has been set at $1500. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

9. Plaintiff Archie Jones is twenty-one years of age, a citizen of the United States and has lived at 5825 Cobbs Creek Parkway, Philadelphia, Pa., for four years preceding his arrest. He intends to return to this residence upon his release and would have returned to this address if he could afford bail. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on July 8, 1971 and bail has been set at $2500. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

10. Plaintiff Carl Lane is 37 years of age, a United States citizen and has lived at 2233 Greenwich Street, Philadelphia, Pennsylvania for his entire life preceding his arrest. He intends to return to this residence upon his release and would have returned to this address if he could afford bail. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on June 2, 1971. Bail has been set at $6500. He desires to register in the precinct where he resided prior to his arrest so that he may be able to

vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

11. Plaintiff Michael Mitchell is twenty-two years of age, a United States citizen and has resided at 2525 W. Huntingdon Street, Philadelphia, Pennsylvania for four years preceding his arrest. He intends to return to this residence upon his release and would have returned to this residence if he could afford bail. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on May 8, 1971. Bail has been set at $10,000. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

12. Plaintiff Curtis Williams is 25 years of age, a United States citizen and has resided at 4823 Hawthorne Street, Philadelphia, Pennsylvania for fourteen years preceding his arrest. He intends to return to this residence upon his release and would have returned if he could afford bail which has been set at $2,000. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on October 1970. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

13. Plaintiff David Casper is 28 years of age, a United States citizen and has resided at 2436 Oxford Street, Philadelphia, Pennsylvania for four years preceding his arrest. He intends to return to this residence and would have returned if he could have bail set at an affordable level. His alleged offense is nonbailable. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on February of 1968. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

14. Plaintiff Robert Simmons is twenty-one years of age, a United States citizen, and has resided at 49 North 52 Street, Philadelphia, Pennsylvania for seven months

prior to his arrest. His alleged offense is a nonbailable one. He is presently incarcerated in Holmesburg County Prison. He has been awaiting trial since his arrest on May 18, 1971. He desires to register in the precinct where he resided prior to his arrest so that he may be able to vote on November 2, 1971 and in all future elections, federal, state and local in his precinct and ward.

15. Plaintiff Bobby Stockton is currently registered to vote in Philadelphia County, Pennsylvania and is imprisoned in Holmesburg Prison awaiting trial because he cannot afford bail. He desires to vote in November 2, 1971 and in all future elections, federal, state and local.

16. Plaintiff Nathaniel Nelson is currently registered to vote in Philadelphia County, Pennsylvania, and is imprisoned in Holmesburg Prison awaiting trial because he cannot afford bail in the amount of $5700. He desires to vote on November 2, 1971 and in all future elections federal, state and local.

17. Plaintiff Hugh Williams is currently registered to vote in Philadelphia County, Pennsylvania and is imprisoned in Holmesburg Prison awaiting trial on a nonbailable offense. He desires to vote on November 2, 1971 and in all future elections federal, state and local.

18. Defendants Maurice S. Osser, Frank Patterson and Louis Menna are City Commissioners of Philadelphia, constituting the Board of Elections and the defendant Registration Commission of the city and county of Philadelphia. Pursuant to the Pennsylvania Election Code said Commissioners must register all persons qualified to vote in Philadelphia.

19. Defendant Edward G. Mekel is the Deputy City Commissioner of Philadelphia and is charged with the same duties as the Commissioners as enumerated above.

20. Defendant Jack Welsh is the Voting Registration Supervisor for the City and County of Philadelphia.

21. Defendants J. Shane Creamer, the Attorney General of the Commonwealth of Pennsylvania and C. Delores Tucker, the Secretary of the Commonwealth of Pennsylvania are duly appointed State officials mandated to enforce and administer the election laws of the Commonwealth of Pennsylvania.

22. Edward J. Hendricks, Superintendent of Prisons in and for the County of Philadelphia is empowered to superintend and administer: Holmesburg Prison, 8215 Torresdale, Avenue, Phila., Penn., Detention Center, 8201 State Road, Phila., Penna., and House of Correction, 8001 State Road, Phila.

CLASS ACTION ALLEGATIONS

23. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, the plaintiffs bring this action in their own behalf and on behalf of all other untried inmates similarly situated. The class represented by the plaintiffs consists of all untried inmates incarcerated in Philadelphia County jails who possess the "qualifications of electors" in compliance with Pennsylvania Election Code, Act of June 3, 1937 P.L. 1333, Article III § 703, 1959, December 30, P.L. 2085, § 1, 25 PS § 2811, and who (a) have sought to register to vote or seek to register to vote in local, statewide and national elections in the County of Philadelphia and (b) are presently registered to vote or subsequently registered and who desire to vote on November 2, 1971 and in all future local, national and state elections. The approximate size of the class is in excess of 2,000. The members of the class are so numerous that joinder of all members is impracticable.

24. The questions of law and fact are common to the class, said questions being whether the plaintiffs and all those similarly situated are being unconstitutionally deprived of their right to register to vote and their right to vote as more fully set forth in paragraphs 60-69, *infra*.

25. The named plaintiffs will fairly and adequately represent the interests of the class in that plaintiffs either are charged with bailable offenses but cannot afford bail or are charged with non-bailable offenses, as more fully set forth in paragraphs 6 through 17, *supra*.

FACTS

26. Andrew C. Goosby, Theodore T. Gumby, Eric V. Johnson, Archie T. Jones, Carl S. Lane, Michael Mitchell,

Curtis Williams, David Cooper and Robert Simons (hereinafter called unregistered plaintiffs) possess all "qualifications of electors" in compliance with Pennsylvania Election Code, Act of June 3, 1937 P.L. 1333, Article III § 703, 1959, December 30, P.L. 2085, § 1, 25 P.S. § 2811.

27. The unregistered plaintiffs are charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with non-bailable offenses.

28. The unregistered plaintiffs were incarcerated as specified in paragraph 27 above at the time registration was conducted.

29. During the period of registration, while incarcerated, the unregistered plaintiffs desired and continue to desire to be registered to vote in the November 2, 1971 election and all future local, state, and national elections.

30. During the period of registration while incarcerated unregistered plaintiffs could not physically appear before a registrar.

31. On September 8, 1971 J. Shore, a law clerk on the Staff of Community Legal Services asked Jack Welsh, Voting Registration Supervisor whether there were procedures to send registrars to the prison or allow registration by mail for untried pretrial detainees. Mr. Welsh stated that the Pennsylvania Election Laws would not permit such procedures.

32. Thereafter on September 8, 1971 J. Shore visited members of plaintiffs' class at Holmesburg County Prison for purposes of completing documents to formally request registration. Said documents required notarization and J. Shore was refused services of the prison notary for this purpose.

33. On September 13, 1971 within the time period for general registration, Ann S. Torregrossa, Esq. attempted to register seven members of plaintiff's class by presenting the following documents to three registrars:

a. A request by the applicant for himself and for all others similarly situated that a registrar be sent to the prisons as provided for in the case of physically disabled persons under 25 P.S. § 623-20(a).

b. A request by the applicant for himself and for all those similarly situated that registration be effected through the mail as provided for in the case of the military, the merchant marine, etc., under 25 P.S. § 623-20.2.

c. Affidavits which set forth all information required by these statutes, and setting forth all requirements of 25 Purdon's Statutes § 2811.

All three registrars refused to perform the registration and she was finally referred to E. G. Mekel, Deputy Commissioner, who was presented with the above documents. Copies of these documents are attached as Exhibits A-1 through A-7, and are incorporated herein.

34. Defendant E. G. Mekel refused to register the applicants and all others similarly situated either at that time, by mail, or by sending a registrar to the prisons. The reason given by Defendant Mekel for refusing to register the aforesaid individuals or any others was unless they appeared in person before a registrar or qualified as an absentee registrant, he had no authority to register them.

35. Upon refusal of E. G. Mekel to register the applicants and all those similarly situated, appeals were filed immediately pursuant to 25 P.S. § 623-25 with the City Commissioners. The statute requires that a hearing be scheduled within ten days. Copies of this appeal are attached as Exhibits B-1 through B-7 and incorporated herein.

36. When handed the appeals, Mr. Mekel stated that there was no right to appeal since there was no one present to be rejected. Therefore, he advised that Ann S. Torregrossa could leave the appeal forms and requests for registration or take them with her.

37. Notwithstanding this opinion a hearing was belatedly scheduled fifteen days later on September 28, 1971 before Defendants Osser, Patterson, and Menna.

38. Upon receiving notice of the hearing on September 22, 1971, Ann A. Torregrossa, Esq. requested that E. G. Mekel and Commissioner Osser issue subpoenas for the named individuals as they wished to attend the hearing. Defendants Mekel and Osser refused to issue

subpoenas stating they would make stipulations that would alleviate the necessity for their presence.

39. A writ of habeas corpus ad testificandum was filed on September 27, 1971 with the Honorable Judge Jamieson, Common Pleas Court to secure the presence of the named individuals at the hearing; the writ was denied on the ground that it would place too great a burden on the Sheriff's Department to bring the seven appellants to the hearing.

40. After public hearing on September 28, 1971, on the appeals, the Commissioners Osser, Menna, and Patterson denied the appeals, affirming the decision to deny registration to appellants and all those similarly situated, on the basis (1) that the law of Pennsylvania does not allow them to register the appellants and all those similarly situated while they are incarcerated and (2) that even if appellants and all those similarly situated were allowed to register to vote they would not be allowed to vote because they are not "qualified absentee electors" under 25 Purdon's Statutes § 2602(w)(12).

41. Thereafter Defendants Osser, Menna, and Patterson entered into a stipulation through Defendant E. G. Mekel, with Ann S. Torregrossa. A copy of the stipulation is attached hereto as Exhibit C and is incorporated herein.

42. Defendants Osser, Menna, and Patterson stated at the hearing that the cases of David Casper, Robert Simmons, and Hugh Williams or any other incarcerated person awaiting trial on nonbailable offenses, would have been decided on the same basis as were plaintiffs Goosby, Gumby, Johnson, Jones, Lane, Mitchell and Curtis Williams, as stated in paragraph 40, *supra.*

42a. Defendants Osser, Menna and Patterson stated at the hearing that all members of plaintiffs' class who are unregistered would have been denied registration on the same grounds as noted in paragraph 40, *supra.*

43. Plaintiffs Bobby Stockton, Nathaniel Nelson, and Hugh Williams (hereinafter called registered plaintiffs) are duly registered to vote in their respective districts in the November 2, 1971 election and all future federal, state, and local elections.

44. Registered plaintiffs are charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with nonbailable offenses.

45. Registered plaintiffs desire to vote in the November 2, 1971 election and all future federal, state, and local elections.

46. Registered plaintiffs believe that they have no prospects of being released to vote on November 2, 1971, the election date, and believe that they will continue to be incarcerated as described in paragraph 43 *supra*.

47. Registered plaintiffs cannot physically appear to vote at a polling place on November 2, 1971.

48. The Pennsylvania Election Code 25 P.S. § 2602 (w) (12) specifically excludes registered plaintiffs from the class of qualified absentee electors.

49. Defendants Mekel and Osser stated at the hearing on September 28, 1971 that registered untried pretrial detainees would be denied an absentee ballot pursuant to 25 P.S. § 2602(w) (12).

50. Unregistered plaintiffs know of no existing state procedures, and there are no existing state procedures, which would have allowed them or anyone similarly situated to register to vote.

51. Registered plaintiffs know of no existing state procedures, and there are no existing state procedures, which would allow them or anyone in their class to vote on November 2, 1971, or in any other federal, state, or local election during their incarceration.

52. The Commonwealth of Pennsylvania has refused, upon petition, to establish procedures

(a) whereby unregistered plaintiffs and those similarly situated may register to vote; and

(b) whereby registered plaintiffs may exercise their right to vote.

53. The petition referred to above in paragraph 52 was made to defendant, Attorney General of Pennsylvania, J. Shane Creamer on behalf of plaintiffs and all those similarly situated by their attorneys Ann S. Tor-

regrossa, Esq. and Joseph A. Torregrossa, Esq. and by Allen Lawson.

54. Said petition recommended that the Commonwealth of Pennsylvania adopt one or more of the following procedures:

(a) that untried pre-trial detainees be registered either by sending registrars to the institutions where they are incarcerated at reasonable times with reasonable frequency and with reasonable notice, or by allowing them to register by mail; and

(b) that untried pre-trial detainees be allowed to vote either by bringing polling booths or paper ballots to the institutions where they are incarcerated, or by allowing them to go to the polling place in their district, or by absentee ballot.

55. Unregistered plaintiffs and their class are being absolutely denied of their right to register to vote because of the practices, policies, laws and procedures of defendants, acting under color of state law.

56. All plaintiffs and their class are absolutely denied their right to vote because of the practices, policies, laws and procedures of defendants, acting under color of state law.

57. Individuals who are charged with crimes but free on bail, who are convicted of a crime but on probation or parole, and individuals who fall within the provisions of 25 Purdon's Statutes §§ 623-20.2 or 20(a) or 20.3 are not denied the right to register to vote by defendants.

58. Individuals who are charged with crimes but free on bail, who are convicted but on probation or parole, and individuals who fall within the provisions of 25 Purdon's Statutes § 2602(w) are not denied the right to vote by defendants.

59. The laws, statutes, practices, policies and procedures of the Commonwealth of Pennsylvania, and specifically 25 Purdon's Statutes § 2602(w)(12) and 25 Purdon's Statutes §§ 621-1 et seq., deny plaintiffs and their class of their right to register to vote and their right to vote and are unconstitutional because, *inter alia*, (i) they preclude persons of limited means from voting,

tie the right to vote to the affluence of the voter and impose on unreasonable financial hardship on such persons as a precondition of their exercise of the franchise; (ii) they deny the right to register and vote for reasons which do not bear a reasonable relationship to any legitimate state interest in the conduct of elections, and (iii) they have the effect of denying persons the right to vote because of race or color.

FIRST CAUSE OF ACTION

60. Paragraphs 6-59 are realleged and incorporated herein.

61. The Pennsylvania election laws violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the Voting Rights Act of 1965, 42 U.S.C. § 1971(A)(2)(A) because:

(a) As to members of plaintiffs' class who are incarcerated due to their inability to afford bail, the law draws an impermissible classification on the basis of the individual's wealth which cannot serve as a constitutional basis upon which to deny the fundamental right to register and to vote;

(b) As to all members of plaintiffs' class the law denies them equal protection of the laws by allowing and providing the ability for those who are physically unable to register and vote, such as those in the military and the disabled, to, in fact, register and vote, while denying these rights, without national purpose, to untried prisoners who because of confinement are physically unable to register and vote; and

(c) As to all members of plaintiffs' class the law establishes an invidious discrimination against untried detainees as against all other Pennsylvania citizens allowed to register and vote, such discrimination having no rational basis and being prohibited by the Fourteenth Amendment

(d) As to all members of plaintiffs' class, the law invidiously discrimintaes against plaintiffs and denies them the right to vote on the basis of race or color.

SECOND CAUSE OF ACTION

62. Paragraphs 6-59 are realleged and incorporated herein.

63. The Pennsylvania Election Laws deny all members of the plaintiffs' class their right to due process of law in violation of the Fourteenth Amendment to the United States Constitution in that by the denial of the fundamental constitutional right to register and vote it imposes an impermissible punishment upon those who have not been convicted.

THIRD CAUSE OF ACTION

64. Paragraphs 6-59 are realleged and incorporated herein.

65. The Pennsylvania Election Laws, by depriving members of plaintiffs' class the fundamental constitutional right to register and vote, constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution.

FOURTH CAUSE OF ACTION

66. Paragraphs 6-59 are realleged and incorporated herein.

67. The Pennsylvania Election Laws by denying members of plaintiffs' class the right to register and vote deprives such members of their fundamental freedoms of speech, political expression and redress of grievances in violation of the First and Fourteenth Amendments to the United States Constitution.

FIFTH CAUSE OF ACTION

68. Paragraphs 6-59 are realleged and incorporated herein.

69. The Pennsylvania Election Laws deny all members of plaintiffs' class who are eligible or wish to vote in Federal elections, their right to vote in Federal elections and thereby violates Article I, Section 2 of the United States Constitution.

WHEREFORE, plaintiffs and their class respectfully pray that judgment be entered in their favor and against defendants:

(1) permanently enjoining defendants from refusing to register plaintiffs and all those similarly situated;

(2) ordering defendants to reopen the period of registration for a period of one week to enable plaintiffs and all those similarly situated to register to vote;

(3) ordering defendants to make registrars available at reasonable times, with reasonable frequency, and after reasonable notice, to plaintiffs and all those similarly situated at the institutions where plaintiffs and all those similarly situated are incarcerated;

(4) permanently enjoining defendants from denying to plaintiffs and all those similarly situated their right to vote;

(5) ordering defendants to issue absentee ballots to plaintiffs and all those similarly situated, who are registered to vote or who subsequently register, who request absentee ballots;

(6) ordering that defendants post a Notice in conspicuous places in the institutions where plaintiffs and all those similarly situated are incarcerated, the form of said Notice to be as the Court directs, advising plaintiffs and all those similarly situated of the availability of the above-ordered procedures for registering to vote and for voting;

(7) ordering that defendants pay the costs of this action and reasonable counsel fees.

/s/ _____

ANN S. TORREGROSSA, ESQ.
4053 Market St.
Philadelphia, Pa.

/s/ _____

JOSEPH A. TORREGROSSA, ESQ.
2107 Fidelity Building
Philadelphia, Pa.

/s/ _____

JONATHAN STEIN, ESQ.
313 S. Juniper St.
Philadelphia, Pa.

/s/ _____

HARVEY N. SCHMIDT, ESQ.
313 S. Juniper St.
Philadelphia, Pa.

Attorneys for Plaintiffs

EXHIBIT A-1

REQUEST FOR VOTORS' REGISTRATION

I, Andrew Coles Goosby, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Andrew Coles Goosby.
2. My occupation on the date of my arrest was merchant marine.
3. The address of my residence on the date of my arrest was 2663 Wolf St., Phila.
4. This residence is Wilson Park Projects—single family dwelling.
5. I began residence at this address on 1963.
6. The date of my arrest was May 29, 1971.
7. My residence address when I last registered was never registered.
8. My sex is male.
9. My color is Black.
10. The state or territory where I was born is New Jersey.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance w/a.
13. I wish to be registered in the Democratic Party.
14. An Affidavit of Registration is attached.
15. My height is 5 feet 5 inches.
16. The color of my hair is black.
17. The color of my eyes is brown.
18. The date of my birth is 12-10-36.

I hereby make request for a registration card, and, please consider this a request for an absentee ballot under P.S. 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Andrew Coles Goosby

Date 9/13/71

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Andrew Coles Goosby

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-1

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Andrew Coles Goosby.
2. My permanent address is 2663 Wolf St., Phila., Pa.
3. My temporary address is Holmesberg Co. Prison, Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since May 29, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.
4. It is not necessary for me to have resided in the election district where I wish to vote

sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Andrew Coles Goosby

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT A-2

REQUEST FOR VOTORS' REGISTRATION

I, Theodore Youch Gumby, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Theodore Youch Gumby.
2. My occupation on the date of my arrest was cook.
3. The address of my residence on the date of my arrest was 901 North 48th Street.
4. This residence is 3 family dwelling. I lived on 1st floor.
5. I began residence at this address on May, 1970.
6. The date of my arrest was 7-15-'71.
7. My residence address when I last registered was never registered.
8. My sex is male.
9. My color is Black.
10. The state or territory where I was born is Reading, Pennsylvania.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance n/a.
13. I wish to be registered in the Indep.
14. An Affidavit of Registration is attached.
15. My height is 5 feet 4 inches.
16. The color of my hair is brown.
17. The color of my eyes is brown.
18. The date of my birth is May 15, 1953.

I hereby make request for a registration card, and, please consider this as a request for an absentee ballot under 25 P.S. 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Theodore Youch Gumby

Date—9-13-71

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least [T.G.] eighteen years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Ted Gumby

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-2

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO
ALLOW REGISTRATION

1. My name is Theodore Youch Gumby.
2. My permanent address is 901 North 48th St., Phila.
3. My temporary address is Holmesberg Co. Prison, Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since July 15, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 18 years of age. [T.G.]
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Ted Youch Gumby

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT A-3

REQUEST FOR VOTERS' REGISTRATION

I, Eric Vernon Johnson, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Eric Vernon Johnson.
2. My occupation on the date of my arrest was not employed.
3. The address of my residence on the date of my arrest was 1333 Bainbridge St., Phila., Pa.
4. This residence is Single family dwelling.
5. I began residence at this address on 1967.
6. The date of my arrest was May 12, 1971.
7. My residence address when I last registered was never registered.
8. My sex is male.
9. My color is Black.
10. The state or territory where I was born is Philadelphia, Pennsylvania.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance w/a.
13. I wish to be registered in the Democratic Party.
14. An Affidavit of Registration is attached.
15. My height is 5 feet 6 inches.
16. The color of my hair is black.
17. The color of my eyes is brown.
18. The date of my birth is June 14, 1950.

I hereby make request for a registration card, and, please consider this as a request for an absentee ballot under 25 P.S. § 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Eric Johnson

Date Sept. 13, 1971

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Eric Johnson

Sworn to and subscribed before me this 13th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-3

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Eric Vernon Johnson.
2. My permanent address is 1742 Webster St., Phila., Pa.
3. My temporary address is Holmesberg Co. Prison, Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since May 12, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Eric Johnson

Sworn to and subscribed before me this 13 day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT A-4

REQUEST FOR VOTERS' REGISTRATION

I, Curtis Williams, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg County Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Curtis Williams.
2. My occupation on the date of my arrest was student, Temple applicant.
3. The address of my residence on the date of my arrest was 4823 Hawthorne St., Phila.
4. This residence is single family dwelling.
5. I began residence at this address on 1956.
6. The date of my arrest was October, 1970.
7. My residence address when I last registered was 4823 Hawthorne St., Phila., (1968).
8. My sex is male.
9. My color is Black.
10. The state or territory where I was born is Philadelphia, Pennsylvania.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance N/A.
13. I wish to be registered in the Socialist Party.
14. An Affidavit of Registration is attached.
15. My height is 6 feet 2 inches.
16. The color of my hair is black.
17. The color of my eyes is dark brown.
18. The date of my birth is 9/16/46.

I hereby make request for a registration card, and, please consider this as a request for an absentee ballot under 25 P.S. 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Curtis Williams

Date Sept. 13, 1971

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg County Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Curtis Williams

Sworn to and subscribed before me this 13th day of September 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-4

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Curtis Williams.
2. My permanent address is 4823 Hawthorne St.
3. My temporary address is Holmesberg County Prison, Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since October, 1970.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Curtis Williams

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT A-5

REQUEST FOR VOTERS' REGISTRATION

I, Archie Thomas Jones, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Archie Thomas Jones.
2. My occupation on the date of my arrest was mechanic.
3. The address of my residence on the date of my arrest was 5825 Cobbs Creek Parkway.
4. This residence is single family dwelling.
5. I began residence at this address on 1967.
6. The date of my arrest was July 8, 1971.
7. My residence address when I last registered was never registered.
8. My sex is Male.
9. My color is Black.
10. The state or territory where I was born is Philadelphia, Pa.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance N/A.
13. I wish to be registered in the Democratic Party.
14. An Affidavit of Registration is attached.
15. My height is 5 feet 7 inches.
16. The color of my hair is black.
17. The color of my eyes is brown.
18. The date of my birth is 9-27-'49.

I hereby make request for a registration card, and, please consider this as a request for an absentee ballot under 25 P.S. § 623-20.2 (a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Archie Thomas Jones

Date 9-13-71

Sworn to and subscribed before me this 13th day of September, 1971
/s/ [Illegible]

Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Archie Thomas Jones

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-5

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Archie Thomas Jones.
2. My permanent addres is 5825 Cobbs Creek Parkway, Phila., Pa.
3. My temporary address is Holmesberg Co. Prison Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since July 8, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Archie Thomas Jones

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public

EXHIBIT A-6

REQUEST FOR VOTERS' REGISTRATION

I, Michael Mitchell, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Michael Mitchell.
2. My occupation on the date of my arrest was Carpet maker.
3. The address of my residence on the date of my arrest was 2525 Huntingdon St., Phila., Pa.
4. This residence is single family dwelling.
5. I began residence at this address on 1967.
6. The date of my arrest was May 8, 1971.
7. My residence address when I last registered was Never registered.
8. My sex is Male.
9. My color is Black.
10. The state or territory where I was born is Philadelphia, Pennsylvania.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance N/A.
13. I wish to be registered in the Democratic Party.
14. An Affidavit of Registration is attached.
15. My height is 6 feet 1 inches.
16. The color of my hair is black.
17. The color of my eyes is brown.
18. The date of my birth is 7-15-'49.

I hereby make request for a registration card and, please consider this as a request for an absentee ballot under 25 P.S. 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Michael Mitchell

Date 9/13/71

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Michael Mitchell

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-6

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Michael Mitchell.
2. My permanent address is 2525 Huntingdon St., Phila., Pa.
3. My temporary address is Holmesberg Co. Prison Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since May 8, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Michael Mitchell

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT A-7

REQUEST FOR VOTERS' REGISTRATION

I, Carl Sam Lane, hereby request that you send a duly authorized Registrar or person authorized to act on his behalf to my present temporary address at Holmesberg Co. Prison since I am unable to appear in person, or register me according to the provisions of 25 P.S. § 623-20.2. To this extent I have enclosed all information required by this section as follows:

1. My name is Carl Sam Lane.
2. My occupation on the date of my arrest was welder.
3. The address of my residence on the date of my arrest was 2233 Greenwich St., Phila., Pa.
4. This residence is single family dwelling.
5. I began residence at this address on 1934.
6. The date of my arrest was June 2, 1971.
7. My residence address when I last registered was 2233 Greenwich St., Phila., Pa. (4 yrs. ago).
8. My sex is Male.
9. My color is Black.
10. The state or territory where I was born is Philadelphia, Pennsylvania.
11. I am able to read the names on the ballot or voting machine labels.
12. I have no physical disability which will render me unable to see or mark the ballot or operate the voting machine or to enter the voting compartment or voting machine without assistance N/A.
13. I wish to be registered in the Democratic Party.
14. An affidavit of Registration is attached.
15. My height is 6 feet 1 inches.
16. The color of my hair is black.
17. The color of my eyes is brown.
18. The date of my birth is 7-28-34.

I hereby make request for a registration card, and, please consider this a request for an absentee ballot under 25 P.S. 623-20.2(a).

I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Carl Sam Lane

Date 9-13-71

Sworn to and subscribed before me this 13th day of September, 1971
/s/ [Illegible]

Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

This space for insertion by the commission of Voter Registration:

REGISTRATION AFFIDAVIT

I hereby swear or affirm that I am a citizen of the United States, that on the day of the next election I shall be at least twenty-one years of age and shall have resided in the Commonwealth of Pennsylvania for one year and in the election district sixty days, that I am presently awaiting trial in Holmesberg Co. Prison because I am untried for the charges preferred against me, and I cannot afford bail, that I have read the foregoing statements made in connection with my registration and that they are true and correct and that I am legally qualified to vote.

/s/ Carl Sam Lane

Sworn to and subscribed before me this 13th day of September, 1971
/s/ [Illegible]

Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT B-7

CITY COMMISSIONERS
VOTER REGISTRATION DIVISION
GROUND FLOOR, CITY HALL ANNEX
PHILADELPHIA, PENNSYLVANIA

September 13, 1971

APPEAL FROM REFUSAL TO ALLOW REGISTRATION

1. My name is Carl Sam Lane.
2. My permanent address is 2233 Greenwich St., Phila., Pa.
3. My temporary address is Holmesberg Co. Prison, Phila. Pa.
4. On the 13th day of September 1971, I applied to register to vote through my attorney, Ann S. Torregrossa, at the Registrar's office, City Hall, Philadelphia, Pennsylvania.
5. At that time my attorney presented all necessary signed and notarized documents to comply with 25 P.S. § 623-20.2 and 25 P.S. 623-20(a).
6. I am presently incarcerated in Holmesberg Co. Prison awaiting trial because I cannot afford bail and it is therefore impossible for me to appear in person before any registrar. I have been awaiting trial since June 2, 1971.
7. I was told by the Registrar that my application to register was refused because I could not appear in person.
8. My application to register should have been granted because:

a. I meet the requirements of 25 P.S. § 2811, and of the Pennsylvania Constitution, Article 7 § 1, i.e.,

1. I am at least 21 years of age.
2. I am a citizen of the United States.
3. I have resided in Pennsylvania for at least one year.

4. It is not necessary for me to have resided in the election district where I wish to vote sixty days immediately preceding the election as this requirement is waived by 25 P.S. § 2813.

People who are charged with a crime and are free on bail are allowed to register and vote. I, on the other hand, am not allowed to vote solely because I cannot afford bail, and thus cannot appear before the Registrar. This is discriminatory and in violation of the United States Constitution. It means that a rich person charged with a crime can vote while a poor person cannot.

9. Wherefore I, the undersigned affiant, pray to be registered as of the date of my original application and pray that all others similarly situated be allowed to register for the forthcoming election.

10. I hereby swear or affirm that the facts set forth in the foregoing appeal are true and correct to the best of my knowledge, information and belief.

/s/ Carl Sam Lane

Sworn to and subscribed before me this 13th day of September, 1971

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

EXHIBIT C

IN RE: *APPEAL FROM REFUSAL TO ALLOW REGISTRATION FOR:*

Archie Thomas Jones, and
Carl Sam Lane, and
Andrew Coles Goosby, and
Michael Mitchell, and
Curtis Williams, and
Theodore Youch Gumby, and
Eric Vernon Johnson,

STIPULATION

AND NOW, this 28th day of September, 1971 it is stipulated between counsel for appellants in the above-captioned appeal, Ann S. Torregrossa, Esq., and Joseph A. Torregrossa, Esq., and City Commissioners Maurice Osser, Frank Patterson and Louis Menna, and their counsel E. G. Mekel, Esq., and Harry Wolov, Esq., City Solicitor, that, pursuant to the above appeal and hearing scheduled thereon on September 28, 1971:

1. That, for the purpose of their respective appeals, appellants meet the residency, age and citizenship requirements of the Pennsylvania Constitution and Election Laws as stated in the affidavits submitted on September 13, 1971 to the Registration Commissioners.
2. That, an individual charged with a crime who can afford bail or, who though convicted is on probation or parole, who meets the requirements for registration and who presented himself within the legal time period before a Registrar would not be denied registration.
3. That, Commissioners Osser, Patterson, and Menna, authorized Deputy Commissioner Mekel to enter into the above stipulation on their behalf.

/s/ Edward G. Mekel
EDWARD G. MEKEL
Deputy Commissioner

/s/ Ann S. Torregrossa
ANN S. TORREGROSSA, ESQ.

[Caption Omitted in Printing]

MOTION FOR TEMPORARY RESTRAINING ORDER

Filed October 6, 1971

Plaintiffs respectfully move the Court on the basis of the attached affidavits for a temporary restraining order:

1. Restraining defendants from refusing to register to vote plaintiffs and all those similarly situated; and
2. Ordering that the period of registration be reopened for a period of one week to enable plaintiffs and all those similarly situated to register to vote; and
3. Directing defendants to make registrars available at reasonable times with reasonable frequency and after reasonable notice to plaintiffs and all those similarly situated at the institutions where plaintiffs and all those similarly situated are incarcerated; and
4. Restraining defendants from preventing plaintiffs and all those similarly situated from exercising their right to vote; and
5. Ordering that absentee ballots be issued to plaintiffs and those members of their class who are registered or who subsequently register who make request for absentee ballots; and
6. Ordering that defendants retain in separate folders the registration papers of the plaintiffs and members of their class who register until the Motion for Preliminary Injunction is determined; and
7. Ordering defendants to keep in separate folders all absentee ballot requests and all returned absentee ballots until the preliminary injunction is determined; and
8. Ordering defendants to post Notices in conspicuous places in the institutions where plaintiffs and all those similarly situated are incarcerated, the form of said notice to be as the Court directs, advising plaintiffs and all those similarly situated:

(a) of the opportunity to register as specified in paragraph (3), supra, and

(b) that absentee ballots are available to plaintiffs and all those similarly situated who are registered upon request,

on the ground that immediate and irreparable injury, loss and damage will result to plaintiffs and all those similarly situated before defendants or their attorneys can be heard at a hearing on plaintiffs' motion for a preliminary injunction, as more fully appears from the affidavits attached hereto.

Respectfully submitted

/s/ _____
ANN S. TORREGROSSA, ESQ.

/s/ _____
JOSEPH A. TORREGROSSA, ESQ.

/s/ _____
JONATHAN STEIN, ESQ.

/s/ _____
HARVEY N. SCHMIDT, ESQ.

[Caption Omitted in Printing]

Affidavit in Support of Motion for Temporary Restraining Order

Filed October 6, 1971

Andrew C. Goosby, Theodore Y. Gumby, Eric V. Johnson, Archie T. Jones, Carl S. Lane, Michael Mitchell, Curtis Williams, David Casper and Robert Simmons, being duly sworn according to law, depose and say:

1. That they are the plaintiffs in the above-titled action and are duly qualified electors and eligible for registration in Philadelphia County under 25 Purdon's Statute § 2811.

2. That they have been charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with non-bailable offenses.

3. That they were incarcerated as specified in paragraph two, supra, at the time registration was conducted.

4. That they could not physically appear before a registrar.

5. That Registration Commission of Philadelphia County has refused to register plaintiffs by mail, by proxy, or by sending a registrar to Holmesburg Prison.

6. That they have been totally foreclosed from registering to vote by the practices and policies engaged in by defendants pursuant to the Pennsylvania Election Laws.

7. That they all desire to be registered to vote in the November 2, 1971 election and all future local, state and national elections.

8. That unless a temporary restraining order is issued plaintiffs will suffer irreparable harm in that they will be prohibited from voting in all elections which are held while

they are incarcerated for the reasons stated in paragraph two above.

/s/ Andrew Goosby
ANDREW C. GOOSBY

/s/ Theodore Gumby
THEODORE Y. GUMBY

/s/ Eric V. Johnson
ERIC V. JOHNSON

/s/ Archie T. Jones
ARCHIE T. JONES

/s/ Carl Lane
CARL S. LANE

/s/ Michael Mitchell
MICHAEL MITCHELL

/s/ Curtis Williams
CURTIS WILLIAMS

/s/ David J. Casper, Jr.
DAVID CASPER

/s/ Robert Simmons
ROBERT SIMMONS

Notarized as to all signatures on page.

/s/ [Illegible]
Notary Public, Philadelphia,
Philadelphia Co.
My Commission Expires
May 7, 1973

Sworn to and subscribed before me this 30th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

[Caption Omitted in Printing]

AFFIDAVIT IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER

Filed October 6, 1971

Bobby Stockton, Nathaniel Nelson, and Hugh Williams being duly sworn according to law depose and say:

1. That they are the plaintiffs in the above titled action and are duly qualified electors and are registered to vote in Philadelphia County.

2. That they have been charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with non-bailable offenses.

3. That upon information and belief that they will be incarcerated for reasons stated in paragraph 2, supra, on November 2, 1971, the next Election Day.

4. That they cannot physically appear to vote at a polling place on November 2, 1971.

5. That the Pennsylvania Election Code, 25 Pa. 2602 (W) (12) specifically excludes them from the class of qualified absentee electors.

6. That they will be totally foreclosed from exercising their right to vote on November 2, 1971 and in all elections, local, state, and federal which are held while they are incarcerated for reasons stated in paragraph 2, supra, due to the practices, policies engaged in by defendants pursuant to the Pennsylvania Election law.

7. That they all desire to vote in the November 2, 1971 election and all future federal, state, and local elections.

8. That unless a temporary restraining order is issued plaintiffs will suffer irreparable harm in that they will be prohibited from voting in the November 2, 1971 election and all future federal, state, and local elections which

are held while they are incarcerated for reasons stated in paragraph 2, supra.

/s/ Bobby Stockton
BOBBY STOCKTON

/s/ Nathaniel Nelson
NATHANIEL NELSON

/s/ Hugh S. Williams
HUGH WILLIAMS

Notarized as to all signatures on page.

/s/ [Illegible]
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

Sworn to and subscribed before me this 1st day of October, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

[Caption Omitted in Printing]

TEMPORARY RESTRAINING ORDER

Filed October 6, 1971

AND NOW, this day of 1971 on the basis of plaintiffs' Complaint, Motion for a Temporary Restraining Order and Affidavits In Support of Motion for a Temporary Restraining Order, and after Notice to defendants, it appearing that plaintiffs and all those similarly situated will suffer irreparable harm unless this temporary restraining order issue, it is ORDERED as follows:

(1) That defendants be and are hereby temporarily ENJOINED from refusing to register plaintiffs and all those similarly situated;

(2) That defendants be and are hereby ORDERED to reopen the period of registration for a period of one week to enable plaintiffs and all those similarly situated to register to vote; and

(3) That defendants be and are hereby ORDERED to make registrars available at reasonable times, with reasonable frequency and after reasonable notice, to plaintiffs and all those similarly situated at the institutions where plaintiffs and all those similarly situated are incarcerated;

(4) That defendants be and are hereby RESTRAINED from preventing plaintiffs and all those similarly situated from exercising their right to vote; and

(5) That defendants be and are hereby ORDERED to issue absentee ballots to plaintiffs and those members of their class who are registered or who subsequently register and who request absentee ballots; and

(6) That defendants be and are hereby ORDERED to retain in separate folders the registration papers of the plaintiffs and members of their class who register until the Motion for Preliminary Injunction is determined; and

(7) That defendants be and are hereby ORDERED to keep in separate folders all absentee ballot requests and all returned absentee ballots until the Motion for Preliminary Injunction is determined; and

(8) That defendants be and are hereby ORDERED to post a Notice in conspicuous places in the institutions where plaintiffs and all those similarly situated are incarcerated, the form of said Notice to be as the Court directs advising plaintiffs and all those similarly situated (a) of the opportunity to register as specified in paragraph (3) supra, and (b) that absentee ballots are available to plaintiffs and all those similarly situated who are registered upon request; on the ground that unless this temporary restraining order issues, plaintiffs and members of their class will suffer irreparable harm.

ORDERED at o'clock at Philadelphia, Pennsylvania.

BOND in the sum of $ to be entered.

This ORDER will expire on , 1971.

United States District Judge

[Caption Omitted in Printing]

MOTION FOR PRELIMINARY INJUNCTION

Filed October 6, 1971

Plaintiffs respectfully move the Court on the basis of the attached affidavits for a Preliminary Injunction:

1. Enjoining defendants from refusing to register to vote plaintiffs and all those similarly situated; and
2. Ordering that the period of registration be reopened for a period of one week to enable plaintiffs and all those similarly situated to register to vote, and
3. Directing defendants to make registrars available at reasonable times with reasonable frequency and after reasonable notice to plaintiffs and all those similarly situated at the institutions where plaintiffs and all those similarly situated are incarcerated; and
4. Enjoining defendants from preventing plaintiffs and all those similarly situated from exercising their right to vote; and
5. Ordering that absentee ballots be issued to plaintiffs and those members of their class who are registered or who subsequently register who make request for absentee ballots; and
6. Ordering that defendants retain in separate folders the registration papers of the plaintiffs and members of their class who register until the Motion for Preliminary Injunction is determined; and
7. Ordering defendants to keep in separate folders all absentee ballot requests and all returned absentee ballots until the preliminary injunction is determined; and
8. Ordering defendants to post Notices in conspicuous places in the institutions where plaintiffs and all those similarly situated are incarcerated, the form of said Notice to be as the Court directs, advising plaintiffs and all those similarly situated,

(a) of the opportunity to register as specified in paragraph (3) supra, and

(b) that absentee ballots are available to plaintiffs and all those similarly situated who are registered upon request,

on the ground that immediate and irreparable injury, loss and damage will result to plaintiffs and all those similarly situated before defendants or their attorneys can be heard at a final hearing as more fully appears from the affidavits attached hereto; that unless so enjoined and ordered by the Court defendants will continue to refuse to register plaintiffs and all those similarly situated and will continue to prevent plaintiffs and all those similarly situated from exercising their right to vote; and that the issuance of a Preliminary Injunction herein will not cause undue inconvenience or loss to defendants but will prevent irreparable harm to plaintiff.

Respectfully submitted,

/s/ _____
ANN S. TORREGROSSA, ESQ.

/s/ _____
JOSEPH A. TORREGROSSA, ESQ.

/s/ _____
JONATHAN STEIN, ESQ.

/s/ _____
HARVEY N. SCHMIDT, ESQ.

[Caption Omitted in Printing]

Affidavit in Support of Motion for Preliminary Injunction

Filed October 6, 1971

Andrew C. Goosby, Theodore Y. Gumby, Eric V. Johnson, Archie T. Jones, Carl S. Lane, Michael Mitchell, Curtis Williams, David Casper and Robert Simmons, being duly sworn according to law, depose and say:

1. That they are the plaintiffs in the above-titled action and are duly qualified electors and eligible for registration in Philadelphia County under 25 Purdon's Statute § 2811.

2. That they have been charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with non-bailable offenses.

3. That they are incarcerated as specified in paragraph two, supra, at the time registration was conducted.

4. That they could not physically appear before a registrar.

5. That Registration Commission of Philadelphia County has refused to register plaintiffs by mail, by proxy, or by sending a registrar to Holmesburg Prison.

6. That they have been totally foreclosed by registering to vote by the practices and policies engaged in by defendants pursuant to the Pennsylvania Election Laws.

7. That they all desire to be registered to vote in the November 2, 1971 election and all future local, state and national elections.

8. That unless preliminary injunction is granted plaintiffs will suffer irreparable harm in that they will be prohibited from voting in all elections which are held

while they are incarcerated for the reasons stated in paragraph two above.

/s/ Andrew Goosby
ANDREW C. GOOSBY

/s/ Theodore Gumby
THEODORE Y. GUMBY

/s/ Eric V. Johnson
ERIC V. JOHNSON

/s/ Archie T. Jones
ARCHIE T. JONES

/s/ Carl Lane
CARL S. LANE

/s/ Michael Mitchell
MICHAEL MITCHELL

/s/ Curtis Williams
CURTIS WILLIAMS

/s/ David J. Casper, Jr.
DAVID CASPER

/s/ Robert Simmons
ROBERT SIMMONS

Notarized as to all signatures on page.

/s/ [Illegible]
Notary Public, Philadelphia,
Philadelphia Co.
My Commission Expires
May 7, 1973

Sworn to and subscribed before me this 30th day of September, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

[Caption Omitted in Printing]

Affidavit in Support of Motion for Preliminary Injunction

Filed October 6, 1971

Bobby Stockton, Nathaniel Nelson, and Hugh Williams being duly sworn according to law depose and say:

1. That they are the plaintiffs in the above titled action and are duly qualified electors and are registered to vote in Philadelphia County.

2. That they have been charged with criminal offenses, are awaiting trial, and are incarcerated in Holmesburg Prison either because they cannot afford bail or because they are charged with non-bailable offenses.

3. That upon information and belief that they will be incarcerated for reasons stated in paragraph 2, supra, on November 2, 1971, the next Election Day.

4. That they cannot physically appear to vote at a polling place on November 2, 1971.

5. That the Pennsylvania Election Code, 25 Pa. 2602 (W) (12) specifically excludes them from the class of qualified absentee electors.

6. That they will be totally foreclosed from exercising their right to vote on November 2, 1971 and in all elections, local, state, and federal which are held while they are incarcerated for reasons stated in paragraph 2, supra, due to practices and, policies engaged in by defendants pursuant to the Pennsylvania Election law.

7. That they all desire to vote in the November 2, 1971 election and all future federal, state, and local elections.

8. That unless a preliminary injunction is issued plaintiffs will suffer irreparable harm in that they will be prohibited from voting in the November 2, 1971 election and all future federal, state, and local elections.

which are held while they are incarcerated for reasons stated in paragraph 2, supra.

/s/ Bobby Stockton
BOBBY STOCKTON

/s/ Nathaniel Nelson
NATHANIEL NELSON

/s/ Hugh Williams
HUGH WILLIAMS

Notarized as to all signatures on page.

/s/ [Illegible]
Notary Public, Philadelphia,
Philadelphia Co.
My Commission Expires
May 7, 1973

Sworn to and subscribed before me this 1st day of October, 1971.

/s/ [Illegible]
Notary Public
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires May 7, 1973

[Caption Omitted in Printing]

PRELIMINARY INJUNCTION

Filed October 6, 1971

AND NOW, this day of , 1971 on the basis of plaintiffs' Complaint, Motion for a Preliminary Injunction, and Affidavits In Support of Motion for a Preliminary Injunction, and after Notice of defendants and after hearing, it appearing that plaintiffs and all those similarly situated will suffer irreparable harm unless this Preliminary Injunction issues, it is ORDERED as follows:

(1) That defendants be and are hereby enjoined from refusing to register plaintiffs and all those similarly situated;

(2) That defendants be and are hereby ORDERED to reopen the period of registration for a period of one week to enable plaintiffs and all those similarly situated to register to vote; and

(3) That defendants be and are hereby ORDERED to make registrars available at reasonable times, with reasonable frequency and after reasonable notice, to plaintiffs and all those similarly situated at the institutions where plaintiffs and all those similarly situated are incarcerated;

(4) That defendants be and are hereby RESTRAINED from preventing plaintiffs and all those similarly situated from exercising their right to vote; and

(5) That defendants be and are hereby ORDERED to issue absentee ballots to plaintiffs and those members of their class who are registered or who subsequently register and who request absentee ballots; and

(6) That defendants be and are hereby ORDERED to retain in separate folders the registration papers of the plaintiffs and members of their class who register until the Motion for Preliminary Injunction is determined; and

(7) That defendants be and are hereby ORDERED

to keep in separate folders all absentee ballot requests and all returned absentee ballots until the Motion for Preliminary Injunction is determined; and

(8) That defendants be and are hereby ORDERED to post a Notice in conspicuous places in the institutions where plaintiffs and all those similarly situated are incarcerated, the form of said Notice to be as the Court directs advising plaintiffs and all those similarly situated:

(a) of the opportunity to register as specified in paragraph (3) supra, and

(b) that absentee ballots are available to plaintiffs and all those similarly situated who are registered upon request;

on the ground that unless this Preliminary Injunction issues, plaintiffs and members of their class will suffer irreparable harm.

ORDERED at o'clock at Philadelphia, Pennsylvania.

BOND in the sum of $ to be entered.

_____

United States District Judge

[Caption Omitted in Printing]

MOTION FOR THREE-JUDGE COURT

Filed October 7, 1971

Plaintiffs respectfully move for the appointment of a three-judge court to hear the above-captioned case and assign the following reasons in support thereof:

1. This case involves a prayer for declaratory judgment and permanent injunction to enjoin (a) the refusal of defendants to register to vote the above-named plaintiffs who are not registered and (b) the refusal of defendants to allow all plaintiffs to vote pursuant to the Pennsylvania Election Laws, First Class City Permanent Registration Act, 1937, March 30, P.L. 115, §§ 1-46, 25 Purdon's Statutes § 623-1 - § 623-46, and Pennsylvania Election Code, 1937, June 3, P.L. 1333, Art. I, § 102, as amended 1963, August 13, P.L. 707, § 1, 25 Purdon's Statutes § 2602 (w) (12);

2. Said Pennsylvania Election Laws are statutes of Statewide application;

3. Defendants Osser, Patterson, Menna, Mekel, Welsh, Hendricks, Creamer and Tucker are state officers or local officers performing state functions;

4. Said Pennsylvania Election Laws, First Class Permanent Registration Act and Pennsylvania Election Code is challenged as being unconstitutional on its face and as applied in violation of the first, eighth and fourteenth amendments to the United States Constitution and Article I, section 2 of the United States Constitution, said constitutional issues being substantial;

5. The principal issues in this case are substantially identical to the issues involved in the cases of Fair et al. v. Osser et al., Civil Action No. 71-2212, Eastern District of Pennsylvania, and Gilhool et al. v. Chairman and Commissioners, Philadelphia County Board of Elections, et al., Civil Action No. 69-2139, Eastern District

of Pennsylvania, in which three-judge courts were convened.

Respectfully Submitted

/s/ _____
ANN S. TORREGROSSA, ESQ.

/s/ _____
JOSEPH A. TORREGROSSA, ESQ.

/s/ _____
JONATHAN STEIN, ESQ.

/s/ _____
HARVEY N. SCHMIDT, ESQ.

[Caption Omitted in Printing]

ORDER

Filed October 6, 1971

And now, this day of , 1971, upon Motion of Plaintiffs to convene a three-judge Court to hear the above-captioned action, and after hearing thereon, it is ORDERED that a three-judge court be and the same is hereby CONVENED.

United States District Judge

PARTIAL TRANSCRIPT OF THE ORAL OPINION OF TROUTMAN, J.

Filed October 7, 1971

THE COURT: Mr. Wolov, you spoke about the possibility of putting on additional testimony. This would be testimony relative to the administrative burden involved, right?

MR. WOLOV: That is right. Burden on the Registration Commission and burden on the prison system.

THE COURT: Well, as we recessed for lunch, there was some indication that the parties did not intend to present testimony on the question of administrative burdens, and we proceeded accordingly to review the record and consider the arguments of Counsel, and I believe are prepared to make a disposition of the matter which as I see it does not at this point involve the question of administrative burdens. We have carefully considered the arguments of Counsel.

I should like to state that I appreciate that Counsel were completely candid and completely honest with the Court in their presentations of this case.

I presume that neither Counsel nor the Court, by virtue of the short period of time involved, have had the opportunity to do all the research that the question may deserve. On the other hand, the urgency of the matter as presented by the Plaintiffs is such that we feel some compulsion to give you an early and an immediate decision on the basis of what is before us.

The case is apparently unique and apparently is one of first impression, to the extent that it involves a situation where the Attorney General of the Commonwealth appears before the Court as a Defendant and on behalf of the Commonwealth as a Defendant, himself as a Defendant, and the Secretary of the Commonwealth as a Defendant, concedes in open court the unconstitutionality of the Act in question.

Following conferences in Chambers on Monday we have used every moment of available time to study the ramifications of the many questions involved in this case,

and independent of the presentations of Counsel have reviewed the Election Code of the Commonwealth of Pennsylvania and the Administrative Code of the Commonwealth of Pennsylvania to which reference was made this morning.

We note, for example, that as regards the Registration Commission, 25 Purdon's Pennsylvania Statutes Annotated, Section 623.4 provides that the Commission may make regulations not inconsistent with this Act or with the laws of the Commonwealth.

It provides further in Section 623-7 that the Commission may employ special Counsel to advise the Commission from time to time regarding its powers and duties, and concerning the best methods of legal procedure for carrying out the various provisions of the Act, which Counsel is authorized to appear for and represent the Commission "on all appeals taken from its decisions or orders to a Court of Common Pleas."

Moreover, it provides that in any suit—I am referring to Section 2652—that in any suit brought by or against any County Board the Secretary of the Commonwealth shall be permitted to intervene on behalf of the Commonwealth at any stage of the proceedings.

Now, the Administrative Code to which reference was made this morning, as found in 71 Purdon's Statutes details the responsibilities of the Attorney General, among others. We have noted Section 512 of the Code, as found at Section 192 of 71 Purdon's, which establishes the procedure to be followed by a department, board, commission, officer, etc., in connection with any legal difficulty or dispute which arises or in which litigation is commenced.

Reference is there made to the Department of Justice, and imposes upon the Department of Justice the obligation of rendering legal advice.

It further provides that any such department may not legally engage an Attorney to represent the department in matters relating to public business.

And we have also noted, among others, Section 292, 293, as found in Purdon's, which are Sections 902 and 903, respectively, in the Administrative Code, which details the responsibilities of the Department of Justice of the Commonwealth; describes that it is the duty of said de-

partment to furnish legal advice, to supervise, direct and control all of the legal business of every administrative department; beyond that, to represent the Commonwealth or any department in any litigation to which the Commonwealth may be a party.

We recognize that there may be a doubt as to whether the Administrative Code applies to the Registration Commission, but even if it does not, the Commission is obliged to follow the law, and the Attorney General is charged with certain responsibilities as regards the Commonwealth.

Now, here we find in our case the Attorney General appears before this Court and concedes unconstitutionality of the Act in question on behalf of himself, the Commonwealth and the Secretary of the Commonwealth which has been previously indicated is by the Code involved in election matters.

This case is to that extent unlike the student registration case, in which the Attorney General submitted an opinion to the Secretary of the Commonwealth. And while the Court in that case by agreement extended the registration period, the fact is that the proceedings were predicated upon a pre-existing opinion rendered by the Attorney General in the discharge of what he assumed were his proper duties under the circumstances.

This case comes before us without the rendition of an opinion, but with a concession of unconstitutionality without a prior opinion or directive addressed to the Secretary of the Commonwealth or to the Registration Commission or to others charged with the responsibility of administering the election laws.

It has been suggested this morning in oral argument that the Commission is ministerial in its functions, that it must comply with the State law, and it has also been very frankly stated that if the Commission is bound by the Attorney General's action, there is no issue. That becomes, in the language of Counsel, the end of the case.

Now, in effect we are being asked, absent an opinion by the Attorney General, absent his recommendation as to proper procedures, absent his expertise and the expertise of those upon whom he may properly call, to declare this

Act unconstitutional and to establish our own procedures as to registration.

Obviously, this Court is not endowed with the expertise to establish procedures which might be considered reasonable under the peculiar circumstances of this case, which might not be considered burdensome. Indeed, even with the benefit of testimony, it is doubtful that we could fairly and adequately develop a plan of registration on the short notice demanded by the parties.

The Defendants, other than those on whose behalf concessions have been made by the Attorney General, suggest that no substantial issue of Constitutional law is involved.

The threshold question is whether they have the legal right to raise the question in this proceeding, considering that they have received no opinion from the Attorney General, have received no directive, have had no plan suggested to them such as would implement the position taken by the Attorney General. Thus, if they do not have the right to demand a Constitutional adjudication, at least prior to the proper preliminary steps having been taken by the proper legal officers of the Commeanwealth, we find ourselves in the position where we are, in effect, being asked by the Defendants who have not conceded, for some type of advisory opinion; and as competent and capable Counsel in this case so well know, a controversy presented to the Court must be one that is appropriate for judicial determination. It must touch the legal relation of the parties having adverse legal interests. But there are no adverse legal interests as between the Commonwealth and the Plaintiffs. The adverse legal interests existing, if they do exist as between the Plaintiffs and the Defendant Commissioners, who even to this day have not had the opportunity to react to a proper opinion by the Attorney General such as was submitted in the student registration case, the business of the Federal Courts are limited to questions in an adversary context and in a form historically viewed as capable of resolution through the judicial process. And in part these words define the role assigned to the judiciary in a tripartite allocation of power to assure that the Federal Courts will not intrude into areas committed to other branches of government.

Unconstitutional statutes there may be, but unless they are involved in a case properly susceptible of judicial determination, Courts have no power to pronounce that they are unconstitutional. And the reluctance of the Courts to pass on Constitutional issues, unless absolutely necessary, has led, as you know, to a set of rules as to what constitutes a justiciable case or controversy.

We are concerned, as to whether the Defendants are a proper party to request the adjudication of the issue in this case, even aside from the question of the lack of controversy and the lack of a justiciable issue because of the concessions made by the Attorney General in his capacity defined by statute.

The Courts do not render advisory opinions. They require the presentation of concrete legal issues in actual cases.

In view of the concessions made by the Attorney General, it is our belief that a substantial controversy between parties having adverse legal interests does not exist.

It has been stated that no Federal Court has jurisdiction to pronounce any statute, either of the State or of the United States void because irreconcilable with the Constitution except as it is called upon to adjudge the legal rights of litigants in actual controversies.

Now, in the instant case the Attorney General, as the chief legal officer of the Commonwealth, obviously represents, as Counsel have stated in their arguments this morning, the "prinicpal" Defendant or Defendants. The position taken by the remaining Defendants seems to be the result of the fact that the Attorney General has not, in accordance with his past practice, rendered an opinion together with suggested procedures, plans, etc., covering the subject matter of the opinion.

It is, therefore, our conclusion that in the posture of this case as it presently exists that there is no controversy in the sense in which that term is used by the Courts, and we find ourselves compelled to, therefore, dismiss the complaint. It is so ordered.

That renders unnecessary, of course, the matter of our reaching the question of a temporary restraining order.

It also renders unnecessary our reaching the question of the convening of a three-Judge Court.

Court will be in recess.

MR. TORREGROSSA: Your Honor, I just want to make one statement for the record. We do have a witness available who will testify to the procedures and plans outlined to enable our class to register and vote. And this has been suggested by the Attorney General, that he testify and outline the procedures and plans.

MR. ROTH: Your Honor, we would also like to submit that if Your Honor wishes, the Attorney General will come forth with an opinion today, if that seems to be the only procedural problem involved in the case.

THE COURT: That is more than a procedural problem. I think the Court has expressed its rulings as clearly as it can, considering that we have not had the opportunity to reflect and re-reflect upon the careful verbiage of a carefully written opinion. If the Attorney General submits an opinion, I do not know whether that will lead to any further difficulties or not. If it does, then that is a matter which you will have to meet in connection with, I would assume, another action. There is no presumption in my mind that the Defendants will or will not comply with a proper opinion of the Attorney General. This is a matter, I think, that they have to decide once it is submitted.

MR. WOLOV: I would like to point out to the Court, sir, that the same question was raised in Fare vs. Osser, which as the Attorney General's opinion again, and there the Court said "We will not determine that question in this Court. That is going to be an action sometime in the State Courts, and the State Courts will determine that question. We are not going to be called upon to determine that question."

THE COURT: Well, I do not think this Court should be called upon to determine matters and questions which are properly the function of the State Courts. For what it is worth, I agree to that extent. When it is a proper function for the State Courts, and when it is a proper function for this Court, again depends upon the facts and circumstances.

MR. WOLOV: Thank you.

MR. TORREGROSSA: Your Honor, excuse me. Will you issue an order dismissing the complaint along the lines that you have mentioned, or will it be noted in the docket?

THE COURT: I have ruled from the bench, Mr. Torregrossa, because I felt you were entitled to prompt consideration. I see no necessity for any further order.

MR. TORREGROSSA: Fine.

THE COURT: It is part of the record. The Clerk will, of course, enter a minute order dismissing the complaint, but that is purely a formality.

MR. TORREGROSSA: Fine.

THE COURT: Thank you very much, gentlemen. Court will be in recess.

[Caption Omitted in Printing]

ORDER

Filed October 7, 1971

TROUTMAN, J.

AND NOW, this 6th day of October, 1971, IT IS ORDERED that plaintiffs' complaint in the above captioned matter is hereby DISMISSED WITH PREJUDICE.

BY THE COURT,

/s/ E. Mac Troutman
J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 71-1935

ANDREW C. GOOSBY,
Holmesburg Prison
Philadelphia, Pa. and

THEODORE Y. GUMBY,
Holmesburg Prison
Philadelphia, Pa. and

ERIC V. JOHNSON,
Holmesburg Prison
Philadelphia, Pa. and

ARCHIE T. JONES,
Holmesburg Prison
Philadelphia, Pa. and

CARL S. LANE,
Holmesburg Prison
Philadelphia, Pa. and

MICHAEL MITCHELL,
Holmesburg Prison
Philadelphia, Pa. and

CURTIS WILLIAMS,
Holmesburg Prison
Philadelphia, Pa. and

DAVID CASPER,
Holmesburg Prison
Philadelphia, Pa. and

ROBERT SIMMONS,
Holmesburg Prison
Philadelphia, Pa. and

BOBBY STOCKTON,
Holmesburg Prison
Philadelphia, Pa. and

NATHANIEL NELSON,
Holmesburg Prison
Philadelphia, Pa. and

HUGH WILLIAMS,
Holmesburg Prison
Philadelphia, Pa.,

on behalf of themselves and
all others similarly situated
APPELLANTS

vs.

MAURICE S. OSSER, City Commissioner
City Hall Annex
Philadelphia, Pa. and

FRANK PATTERSON, City Commissioner
City Hall Annex
Philadelphia, Pa. and

LOUIS MENNA, City Commissioner
City Hall Annex
Philadelphia, Pa. and

EDWARD G. MEKEL, Deputy Commissioner
City Hall Annex
Philadelphia, Pa. and

JACK WELSH, Voting Registration Supervisor
City Hall Annex
Philadelphia, Pa.

REGISTRATION COMMISSION FOR THE CITY OF PHILADELPHIA
City Hall Annex
Philadelphia, Pa. and

COMMONWEALTH OF PENNSYLVANIA
and

J. SHANE CREAMER, Attorney General
Commonwealth of Pennsylvania
Harrisburg, Pa. and

C. DELORES TUCKER, Secretary of the Commonwealth
Commonwealth of Pennsylvania
Harrisburg, Pa. and
EDWARD J. HENDRICKS
Superintendent of Prisons for Philadelphia County

(D. C. Civil No. 71-2380)

APPEAL FROM THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

Submitted under Third Circuit Rule 12(6)
on October 21, 1971

Before: ALDISERT, GIBBONS and ROSENN,
Circuit Judges

OPINION OF THE COURT

(Filed October 26, 1971)

PER CURIAM:

This appeal from the district court's order of October 6, 1971 requires us to decide whether the court erred in dismissing plaintiffs' complaint. We are persuaded that there was no error and will affirm.

We have concluded that the substantive constitutional challenge to the two Pennsylvania statutes was wholly insubstantial and that the convening of a statutory court was not required under 28 U.S.C.A. § 2281. Baily vs. Patterson, 396 U.S. 31 (1962).

Plaintiffs, untried detainees in Philadelphia prisons, have alleged that the First Class County (Philadelphia) Permanent Registration Act of March 30, 1937, P.L. 115, as amended by the Act of August 13, 1963, P.L. 707 § 1,

25 PURD. STAT. ANNO. § 2602(w)(12), offended the equal protection clause and are therefore unconstitutional. The former statute regulates voting registration; the latter, "qualified absentee elector".

Thus, at the threshold, we emphasize that the attacked statutes do not control the right to vote. The distinction between the mechanics of controlling the exercise of the franchise, and its selective distribution, is made clear in *McDonald* v. *Board of Election Commission of Chicago*, 394 U.S. 802 (1969). Compare *Stephens* v. *Yeoman*, 327 F. Supp. 1182 (D.N.J. 1970). Regulations setting forth the mechanics of controlling the exercise of the franchise are measured by the test that "statutory classifications will be set aside only if no ground can be conceived to justify them." *McDonald, supra*, 394 U.S. at 809.

Measured by this test, the Pennsylvania legislative scheme requiring that places of registration be open to the public, *Devlin* v. *Osser*, 434 Pa. 408, 254 A.2d 303 (1969), and that absentee ballots not be made available to those "confined in a penal institution or a mental institution," 25 PURD. STAT. ANNO. § 2602(w)(12), clearly may not be set aside. *Ray* v. *Commonwealth of Pennsylvania*, 276 A.2d 509 (1971).

We have carefully considered each of the contentions raised by the appellants and find them to be without merit. Under ordinary circumstances, we would be inclined to present an extended discussion of the controlling issues. Since the emergency nature of this appeal suggests an immediate adjudication by us, we have limited our opinion to this brief statement.

The judgment of the district court dismissing the complaint will be affirmed.

To the Clerk:

Please file the foregoing opinion

/s/ Rugerro Aldisert
Circuit Judge

[Caption Omitted in Printing]

Present: ALDISERT, GIBBONS and ROSENN,
Circuit Judges

JUDGMENT

Filed October 26, 1971

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted by counsel under Third Circuit Rule 12(6).

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed October 7, 1971, which dismissed the complaint be, and the same is hereby affirmed. Costs taxed against Appellants.

ATTEST:

/s/ M. Elizabeth Ferguson
Chief Deputy Clerk

October 26, 1971

[Caption Omitted in Printing]

Present: ALDISERT, GIBBONS and ROSENN,
Circuit Judges

ORDER AMENDING SLIP OPINION OF OCTOBER 26, 1971
Filed November 11, 1971

It is ORDERED that the slip opinion heretofore filed on October 26, 1971, be and the same is amended as follows:

1. The last five lines of the second paragraph on page four (4) are deleted and the following substituted therefor: "as amended by the Act of August 14, 1963, P.L. 900, 25 PURD. STAT. ANNO. § 623-1 et seq., and Pennsylvania Election Code, Act of 1937, P.L. 1333, Art. I, Sec. 102, as amended by the Act of August 13, 1963, P.L. 707, 25 PURD. STAT. ANNO. § 2602(w)(12), offend the equal protection clause and are therefore unconstitutional. The former statute regulates voting registration; the latter defines qualified absentee elector."

2. The first line on page five (5) is deleted and the following substituted therefor: "immediate adjudication, we have limited our opinion".

BY THE COURT

RUGGERO J. ALDISERT
Circuit Judge

DATED: November 11, 1971

A True Copy:

Teste:

Clerk of the United States Court of
Appeals for the Third Circuit

[Caption Omitted in Printing]

Before SEITZ, *Chief Judge*, and VAN DUSEN, ALDISERT, ADAMS, GIBBONS, ROSENN, ROSEN, and HUNTER, *Circuit Judges*

ON PETITION FOR REHEARING BEFORE THE COURT EN BANC WITH SEPARATE DISSENT BY CIRCUIT JUDGE ADAMS

Filed December 17, 1971

PER CURIAM:

Upon consideration of the petition for rehearing, the prayer of the petition is denied. Judges Van Dusen, Adams and Rosenn would grant the petition for rehearing.

BY THE COURT

RUGGERO J. ALDISERT
Circuit Judge

DATED: December 17, 1971

ADAMS, *Circuit Judge*, dissenting.

Only in the most unusual circumstance do I believe that a judge of this court should dissent with opinion from an order of the court denying rehearing en banc. However, in my judgment, this case constitutes such an occasion.

Rule 35 of the Federal Rules of Appellate Procedure indicates that when there is no question of uniformity of decisions rehearing en banc should occur only "when the proceeding involves a question of exceptional importance." The issues "of exceptional importance" in this case are two-fold—(1) the right of unconvicted indigent prisoners

to vote, and (2) the proper adjudicatory role of a court of appeals.

As for the first issue, the complaint alleges that in Philadelphia more than 2,000 individuals, while charged with but not convicted of a crime, are incarcerated because of an inability to secure bail and are being unconstitutionally deprived of their right to vote. The plaintiffs, class representatives, assert that they possess all the qualifications of electors set forth in the Pennsylvania Election Code, Tit. 25 Pa. Stat. Ann. § 2811, but because of the operation of certain other sections of the Election Code and the activities of local election officials they cannot exercise their franchise at all.

Relying on McDonald v. Board of Election Comm'rs., 394 U.S. 802 (1969), the original panel found the allegations of the complaint to be "wholly insubstantial." In this regard, we are reminded of the language contained in Reynolds v. Sims, 377 U.S. 533, 561-62 (1964):

> "Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized."

After the careful scrutiny mandated by *Reynolds*, it is not at all clear that *McDonald* controls the present situation. The unconvicted inmates in *McDonald* alleged in their complaint no more than the fact that they were not permitted to vote in Illinois by absentee ballot, and that this provision of the Illinois voting law violated their right to equal protection since the physically infirm were allowed to vote by absentee ballot. The record in *McDonald* never suggested that these prisoners had attempted to use alternative means to exercise their franchise. This prompted the Supreme Court to note:

> "Appellants agree that the record is barren of any indication that the State might not, for instance, possibly furnish the jails with special polling booths

> or facilities on election day, or provide guarded transportation to the polls themselves for certain inmates, or entertain motions for temporary reductions in bail to allow some inmates to get to the polls on their own." *McDonald, supra*, at 808, n.6.

On the other hand, the uncontroverted allegations of the complaint in the present case—which because of the procedural posture must be assumed to be true—aver first that these prisoners cannot vote at all by absentee ballot or otherwise, and second that the disenfranchisement has occurred as a result of the poverty of the inmates, that is, unconvicted rich persons accused of crimes are able to raise enough money to go free on bail and thus exercise their right to vote in person, while the poor are not capable of paying a surety. Furthermore, the complaint here asserts that requests for alternative means have been consistently denied, and therefore alleges an absolute denial of the right to vote. Because of the significant factual differences which appear between *McDonald* and this case, I for one am not prepared to dismiss the allegations here as frivolous.

Once these crucial differences are recognized, the second of the two issues of exceptional importance becomes apparent. Federal courts must decide only the questions squarely before them. U.S. CONST., ART. III, § 2. This case involves a request that a three-judge district court be convened pursuant to 28 U.S.C. § 2281. The statute, by its terms, covers suits brought to enjoin the "enforcement, operation or execution of any State statute . . ." In addition, the Supreme Court has interpreted Section 2281 to require the existence of a substantial constitutional question prior to the convening of a three-judge court. Idlewild Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713 (1962). The complaint here does seek to enjoin the operation and enforcement of certain portions of the Pennsylvania election code. As a matter of procedure, then, when this Court is asked to rule on the propriety of a denial of a request for a three-judge court, if the other tests for convening such a court are met, *see e.g.*, Reed Enterprises v. Corcoran, 354 F.2d 519

(D.C. Cir. 1963), our primary inquiry, and in my view of this case the only inquiry, should go to the substantiality of the constitutional claim asserted. To decide the merits, as the panel did here, is to usurp the function of the three-judge court.

Therefore, without reaching the ultimate issues of the case before us, it is clear that because this case is different from *McDonald*, serious constitutional questions unanswered by *McDonald* still exist. Because these differences alone should result in a remand for the purpose of convening a three-judge court, I respectfully dissent from a denial of rehearing en banc—a rehearing which would enable the full court to determine whether a substantial question of constitutional dimension exists.

[Caption Omitted in Printing]

Present: ALDISERT, GIBBONS and ROSENN,
Circuit Judges

JUDGMENT

Filed December 27, 1971

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted by counsel under Third Circuit Rule 12(6).

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed October 7, 1971, which dismissed the complaint be, and the same is hereby affirmed. Costs taxed against Appellants.

ATTEST:

/s/ M. Elizabeth Ferguson
Chief Deputy Clerk

October 26, 1971

Certified as a true copy and issued in lieu of a formal mandate on December 27, 1971.

Test:

THOMAS QUINN
Clerk, United States Court of
Appeals for the Third Circuit

SUPREME COURT OF THE UNITED STATES

No. 71-6316

ANDREW C. GOOSBY, ET AL., PETITIONERS

v.

MAURICE OSSER, ET AL.

On petition for writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 475228 107

[Caption Omitted in Printing]

Present: ALDISERT, GIBBONS and ROSENN,
Circuit Judges

JUDGMENT

Filed December 27, 1971

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted by counsel under Third Circuit Rule 12(6).

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the said District Court, filed October 7, 1971, which dismissed the complaint be, and the same is hereby affirmed. Costs taxed against Appellants.

ATTEST:

/s/ M. Elizabeth Ferguson
Chief Deputy Clerk

October 26, 1971

Certified as a true copy and issued in lieu of a formal mandate on December 27, 1971.

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On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1972 478228 107

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. .

ANDREW C. GOOSBY, ET AL.,
Petitioners,

v.

MAURICE OSSER, ET AL.,
Respondents.

MOTION FOR LEAVE TO FILE BRIEF (ATTACHED) AS AMICI CURIAE IN SUPPORT OF PETITION FOR CERTIORARI.

AND Now, this 6th day of March, 1972, consent to file a Brief in Support of Petition for Certiorari having been refused by certain Respondents, the organizations listed below move this Honorable Court for leave to file their Brief as Amici Curiae, attached hereto, in support of the Petition for Certiorari:

American Jewish Committee (National)
American Jewish Committee, Philadelphia Chapter
American Civil Liberties Union, Pennsylvania Chapter
Barbwire Society
The Committee of Seventy
National Emergency Civil Liberties Committee
National Lawyers Guild
Pennsylvania Prison Society
Philadelphia Urban Coalition, Criminal Justice Task Force
Prisoners Rights Council

Of Counsel:
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HERBERT B. NEWBERG
ALLAN H. REUBEN
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Attorneys for American Jewish Committee (National) and American Jewish Committee, Philadelphia Chapter, as Amici Curiae

MICHAEL VON MOSCHZISKER
WILBUR BOURNE RUTHRAUFF
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Attorneys for The Committee of Seventy, as Amicus Curiae

THOMAS BIDDLE HARVEY, JR.
260 So. 15th Street
Philadelphia, Pa. 19102
Attorney for American Civil Liberties Union, Pennsylvania Chapter, as Amicus Curiae

BRUCE ENDY
5101 Arch Street
Philadelphia, Pa. 19139
Attorney for Barbwire Society, as Amicus Curiae

DAVID KAIRYS
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1427 Walnut Street
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Attorneys for National Emergency Civil Liberties Committee, as Amicus Curiae

A. HARRY LEVITAN
1307 Sansom Street
Philadelphia, Pa. 19107
Attorney for National Lawyers Guild, as Amicus Curiae

MIRIAM L. GAFNI
311 So. Juniper Street
Philadelphia, Pa. 19102
Attorney for Pennsylvania Prison Society, as Amicus Curiae

RICARDO CALVIN JACKSON
1512 Walnut Street
Philadelphia, Pa. 19102
Attorney for Philadelphia Urban Coalition, Criminal Justice Task Force, as Amicus Curiae

MARK K. KESSLER
One No. 13th Street
Philadelphia, Pa. 19107
Attorney for Prisoners Rights Council, as Amicus Curiae

JURISDICTION AND STATEMENT OF FACTS.

Amici adopt and incorporate by reference the jurisdictional and factual statements set forth in the Petition for Certiorari.

AMICI CURIAE.

Leave to intervene as amici curiae in support of the Petition for Certiorari by the community, civic and professional groups described in Appendix A hereto is sought because of the strong belief that the voting franchise, which is a fundamental right of all citizens in a democracy, is being arbitrarily and unconstitutionally denied in this case to plaintiffs and the class of untried inmates represented by them. .

QUESTIONS PRESENTED.[1]

May a state statute constitutionally deprive untried inmates of a county prison of the right to register and vote in state and federal elections

(a) when they otherwise meet all the requirements of qualified electors;

(b) when they are incarcerated only because they cannot afford or are not afforded bail for their release pending trial;

(c) when others who are unconvicted, but free on bail or are convicted but free on probation or parole are permitted to register and vote under the same statute; and

(d) when, but for the restrictions of the state statute,[2] reasonable means of registration and absentee voting are readily available for such untried inmates?

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1. The primary concern of Amici Curiae is the ruling by the Court of Appeals on the merits that no substantial question is involved. Other jurisdictional and procedural issues are not addressed here.

2. First Class City Permanent Registration Act of March 30, 1937 P. L. 115, 25 P. S. § 623-1 et seq.

ARGUMENT.

No Compelling State Interest Exists to Support the Constitutionality of a Statute Which Deprives Untried Inmates of a County Prison of the Right to Register and Vote.

The bedrock of our system of criminal jurisprudence rests on the presumption of innocence until proven guilty. Until one accused of crime is adjudged guilty, he retains his fundamental rights of citizenship. These principles are axiomatic.

Without altering these basic tenets, our criminal justice system has developed certain practices heretofore held valid, designed to assure the attendance of accused persons for trial and submission to any sentence that may be imposed. Except for certain non-bailable offenses, all persons accused of crime have the right to be free while awaiting trial by having a court set bail which is reasonable under the circumstances and considering the severity of the crime involved. Eighth Amendment, United States Constitution. See Bail Reform Act of 1966, 18 USC, § 3146; *Stack v. Boyle,* 342 U. S. 1 (1951). Under the present system, the accident of the wealth or proverty of the accused is often determinative of whether that person will be able, as a practical matter, to afford bail and thus be free while awaiting determination of his guilt of innocence. Recently, this Court has recognized certain inherent injustices against poor people and has held that alternative punishment by imprisonment may not be imposed on a convicted person who is unable to pay a criminal fine in a lump sum because he is too poor. *Tate v. Short,* 401 U. S. 395, 91 S. Ct. 668 (1971). The bail system is not being directly attacked in the instant case—but the adverse accidental incidents of that system, at the beginning of the line before trial, are here challenged. The substantive insignificance which must be attributed to incarceration of persons while awaiting trial because they cannot afford bail, is all the more highlighted in view of the *Tate* case.

Political equality requires that everyone be permitted to vote on an equal basis—and that persons may be excluded from voting only upon a showing of compelling interest.

Accordingly, the poll tax qualifications [3] requirements that voters in school board elections be parents or property owners,[4] limiting voting on bond issues to property owners [5] and exclusions of military residents [6] have all been stricken because of the absence of any showing of compelling state interests.

From the available information, the plaintiffs involved here are from 18 to 37 years of age, have bail set ranging from one thousand dollars ($1,000) to ten thousand dollars ($10,000),[7] and, as of the filing of the Complaint, were incarcerated for a period ranging from approximately two and one-half months to three years and seven months! What compelling interest does the state have in depriving Plaintiff Johnson, who is 21 years old, from the right to vote because he cannot afford $1,500 bail while awaiting trial? Where is the compelling state interest to justify taking away the voting franchise of Plaintiff Williams, who has been detained over a year awaiting trial, because he cannot afford $2,000 bail? For how long does any supposed compelling interest of the state extend to disenfranchise and prejudge 28-year-old Plaintiff Caspar, who has been incarcerated for three years and seven months on a non-bailable offense and who is legally presumed innocent until adjudged otherwise at trial? As of October, 1971, there were over 2,000 other untried inmates just like Johnson, and Williams, and Caspar—similarly incarcerated at the same prison. This major prison population consisting of

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3. *Harper v. Virginia State Board of Elections*, 383 U. S. 663 (1966).

4. *Kramer v. Union Free School District*, 395 U. S. 621 (1969).

5. *Cipriano v. City of Houma*, 395 U. S. 701 (1969).

6. *Carrington v. Rash*, 380 U. S. 89 (1965).

7. Three of the twelve plaintiffs have non-bailable offenses charged.

those who cannot afford bail or have non-bailable offenses, is further aggravated by detention periods which are unduly extended because of problems of court backlogs and unavailability of witnesses which are plaguing our criminal court calendars. Such detention serves only to underscore the indignities and deprivations suffered by those who are confined while awaiting trial because they are poor in contrast to those who have bought their freedom during this interval. It is unnecessary to cut off untried prisoners from the community any more than has already happened. In a small but nevertheless tangible way, allowing them to vote would evince recognition on the part of society that they still "count."

The unconstitutionality of the statute involved and the absence of any compelling state interest to justify disenfranchisement of the class of untried inmates is so self-evident that the Pennsylvania Attorney General, as a named defendant, stipulated to this effect in the proceedings below. This stipulation notwithstanding, and despite the lack of such stipulation on the part of the County Registration Commissioners, the trial court dismissed the Complaint for lack of subject matter jurisdiction and the Court of Appeals for the Third Circuit affirmed the dismissal on the grounds that no substantial question had been raised. Subsequently, in a 4 to 3 decision, a petition for rehearing was denied. In a vigorous dissent, Circuit Judge Adams pointed out that this case involves issues "of exceptional importance" and asserted that serious constitutional questions, unanswered by *McDonald v. Board of Election Commissioners*, 394 U. S. 802 (1969), relied on by the original panel, still exist. We agree. The deprivation of a political right so fundamental as the right to vote cannot be sanctioned on the basis of fine-line distinctions or on grounds of convenience in regulating the manner of exercising the franchise. See *Reynolds v. Sims*, 377 U. S. 533, 561-62 (1964). The mechanics of permitting prisoners to register and vote would not be burdensome. The State now uses procedures

for other citizens which could well be extended to prisoners—e.g., mail registration and voting, First Class City Permanent Registration Act of March 30, 1937, P. L. 115, 25 P. S. § 623-20 (Appendix B, pp. 3-4, Petition for Certiorari), now available for the infirm and those in military service, in merchant marine, or federal employment and their dependents.

CONCLUSION.

Amici urge this Court to grant the Petition for Certiorari to decide these fundamental constitutional issues of national importance.

Respectfully submitted,

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APPENDIX A.

Amici Curiae.

AMERICAN JEWISH COMMITTEE (NATIONAL)
AMERICAN JEWISH COMMITTEE, PHILADELPHIA CHAPTER

The American Jewish Committee and its Philadelphia Chapter are well-known community organizations which have long been involved in human relations matters.

AMERICAN CIVIL LIBERTIES UNION, PENNSYLVANIA CHAPTER

The American Civil Liberties Union Foundation of Pennsylvania is a public non-profit corporation; is non-paritisan; and is devoted solely to the protection and advancement of civil liberties, including the right to vote.

BARBWIRE SOCIETY

The Barbwire Society is an organization of ex-prisoners which provides needed services to prisoners, probationers and parolees.

THE COMMITTEE OF SEVENTY

The Committee of Seventy is a private non-partisan civic agency, founded in 1904. Its goal is to secure open honest elections, and to encourage an informed citizenry to exercise its franchise.

NATIONAL EMERGENCY CIVIL LIBERTIES COMMITTEE

The National Emergency Civil Liberties Committee is a national association dedicated to the preservation of civil liberties and the Bill of Rights for all persons.

NATIONAL LAWYERS GUILD

The National Lawyers Guild is a national association of lawyers and legal workers who furnish legal advice and assistance to persons whose rights are denied and who request counsel.